

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE

Case

20-CA-193789

Date Filed

2/24/2017

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer

Vibra Hospital of Sacramento

b. Tel. No. (916) 351-9151

c. Cell No.

f. Fax No.

g. e-Mail

h. Number of workers employed

d. Address (Street, city, state, and ZIP code)

330 Montrose Dr, Folsom, CA 95630

e. Employer Representative

Chase Caldwell

i. Type of Establishment (factory, mine, wholesaler, etc.)

Acute Care Hospital

j. Identify principal product or service

Health Care

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) and 8(a)(5)

of the National Labor Relations Act, and these unfair labor

practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Within the last six months immediately preceding the filing of this charge, the employer, by and through its agents, violated Section 8(a)(1) and 8(a)(5) of the Act, when, on the eve of a decertification election, it unilaterally implemented a policy to pay the mileage of employees who were not scheduled to work, if they came in to vote. The Union requests that this charge block Case No. 20-RD-192543.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

Service Employees International Union, United Healthcare Workers-West

4a. Address (Street and number, city, state, and ZIP code)

560 Thomas L. Berkley Way
Oakland, CA 94612

4b. Tel. No. (510) 251-1250

4c. Cell No.

4d. Fax No. (510) 763-2680

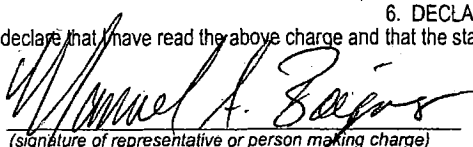
4e. e-Mail

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) Service Employees International Union,

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By



Manuel A. Boigues

(signature of representative or person making charge)

(Print/type name and title or office, if any)

Tel. No. (510) 337-1001

Office, if any, Cell No.

Fax No. (510) 337-1023

e-Mail

mboigues@unioncounsel.net

Address 1001 Marina Village Parkway, Suite 200, Alameda, CA 94501

2/24/17
(date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

ORIGINAL



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 20
901 Market Street, Suite 400
San Francisco, CA 94103-1738

Agency Website: www.nlr.gov
Telephone: (415)356-5130
Fax: (415)356-5156



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February 27, 2017

Chase Caldwell
Vibra Hospital of Sacramento
330 Montrose Dr
Folsom, CA 95630-2720

Re: Vibra Hospital of Sacramento
Case 20-CA-193789

Dear Mr. Caldwell:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Examiner SAMUEL J. HOFFMANN whose telephone number is (628)221-8855. If this Board agent is not available, you may contact Supervisory Field Examiner OLIVIA VARGAS whose telephone number is (628)221-8876.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlr.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent.

February 27, 2017

Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

Procedures: We strongly urge everyone to submit all documents and other materials by E-Filing (not e-mailing) through our website, www.nlr.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlr.gov or from an NLRB office upon your request. NLRB Form 4541 offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,



JILL H. COFFMAN
Regional Director

Enclosures:

1. Copy of Charge
2. Commerce Questionnaire

Revised 3/21/2011

NATIONAL LABOR RELATIONS BOARD

QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME

CASE NUMBER

20-CA-193789

1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)

2. TYPE OF ENTITY

☐ CORPORATION ☐ LLC ☐ LLP ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER (Specify)

3. IF A CORPORATION or LLC

A. STATE OF INCORPORATION
OR FORMATION

B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES

4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS

5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR

6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).

7. A. PRINCIPAL LOCATION:

B. BRANCH LOCATIONS:

8. NUMBER OF PEOPLE PRESENTLY EMPLOYED

A. Total:

B. At the address involved in this matter:

9. DURING THE MOST RECENT (Check appropriate box): ☐ CALENDAR YR ☐ 12 MONTHS or ☐ FISCAL YR (FY dates)

YES NO

A. Did you **provide services** valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value.
\$B. If you answered no to 9A, did you **provide services** valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided.
\$C. If you answered no to 9A and 9B, did you **provide services** valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$D. Did you **sell goods** valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$E. If you answered no to 9D, did you **sell goods** valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount.
\$F. Did you **purchase and receive goods** valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$G. Did you **purchase and receive goods** valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$H. **Gross Revenues** from all sales or performance of services (Check the largest amount)
☐ \$100,000 ☐ \$250,000 ☐ \$500,000 ☐ \$1,000,000 or more If less than \$100,000, indicate amount.I. Did you **begin operations within the last 12 months**? If yes, specify date: _____

10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?

☐ YES ☐ NO (If yes, name and address of association or group).

11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS

NAME

TITLE

E-MAIL ADDRESS

TEL. NUMBER

12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE (Type or Print)

SIGNATURE

E-MAIL ADDRESS

DATE

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

VIBRA HOSPITAL OF SACRAMENTO

Charged Party

and

**SERVICE EMPLOYEES INTERNATIONAL
UNION, UNITED HEALTHCARE WORKERS-
WEST**

Charging Party

Case 20-CA-193789

AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, state under oath that on February 27, 2017, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

Chase Caldwell
Vibra Hospital of Sacramento
330 Montrose Dr
Folsom, CA 95630-2720

February 27, 2017

Date

Donna Gentry, Designated Agent of NLRB

Name

/s/ Donna Gentry

Signature



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 20
901 Market Street, Suite 400
San Francisco, CA 94103-1738

Agency Website: www.nlr.gov
Telephone: (415)356-5130
Fax: (415)356-5156



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February 27, 2017

Service Employees International Union,
United Healthcare Workers-West
560 Thomas L. Berkley Way
Oakland, CA 94612-1602

Re: Vibra Hospital of Sacramento
Case 20-CA-193789

Dear Sir or Madam:

The charge that you filed in this case on February 24, 2017 has been docketed as case number 20-CA-193789. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Examiner SAMUEL J. HOFFMANN whose telephone number is (628)221-8855. If this Board agent is not available, you may contact Supervisory Field Examiner OLIVIA VARGAS whose telephone number is (628)221-8876.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlr.gov, or at the Regional office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

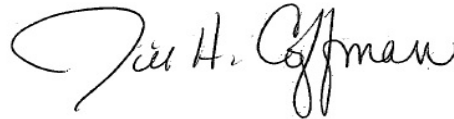
February 27, 2017

Procedures: We strongly urge everyone to submit all documents and other materials by E-Filing (not e-mailing) through our website www.nlr.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website www.nlr.gov or from the Regional Office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jill H. Coffman". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

JILL H. COFFMAN
Regional Director

Enclosure

cc: Manuel A. Boigues
Weinberg Roger & Rosenfeld, P. C.
1001 Marina Village Pkwy
Suite 200
Alameda, CA 94501

NATIONAL LABOR RELATIONS BOARD

NOTICE OF APPEARANCE

VIBRA HOSPITAL OF SACRAMENTO
and
SEIU,UHWW

CASE 20-CA-193789

☒ REGIONAL DIRECTOR

☐ EXECUTIVE SECRETARY
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

☐ GENERAL COUNSEL
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

THE UNDERSIGNED HEREBY ENTERS APPEARANCE AS REPRESENTATIVE OF _____
the Employer

IN THE ABOVE-CAPTIONED MATTER.

CHECK THE APPROPRIATE BOX(ES) BELOW:

☒ REPRESENTATIVE IS AN ATTORNEY

☐ IF REPRESENTATIVE IS AN ATTORNEY, IN ORDER TO ENSURE THAT THE PARTY MAY RECEIVE COPIES OF CERTAIN DOCUMENTS OR CORRESPONDENCE FROM THE AGENCY IN ADDITION TO THOSE DESCRIBED BELOW, THIS BOX MUST BE CHECKED. IF THIS BOX IS NOT CHECKED, THE PARTY WILL RECEIVE ONLY COPIES OF CERTAIN DOCUMENTS SUCH AS CHARGES, PETITIONS AND FORMAL DOCUMENTS AS DESCRIBED IN SEC. 11842.3 OF THE CASEHANDLING MANUAL.

(REPRESENTATIVE INFORMATION)

NAME:	Bruce D. Bagley
MAILING ADDRESS:	4550 Lena Drive , Suite 225 Mechanicsburg, Pa. 17055
E-MAIL ADDRESS:	bbagley@vibrahealth.com
OFFICE TELEPHONE NUMBER:	
CELL PHONE NUMBER:	717-503-6641
FAX:	
SIGNATURE:	
	(Please sign in ink.)
DATE:	

¹ IF CASE IS PENDING IN WASHINGTON AND NOTICE OF APPEARANCE IS SENT TO THE GENERAL COUNSEL OR THE EXECUTIVE SECRETARY, A COPY SHOULD BE SENT TO THE REGIONAL COUNSEL OF THE REGION IN WHICH THE CASE WAS FILED SO THAT THOSE RECORDS WILL REFLECT THE APPEARANCE.

From: [Bruce Bagley](#)
To: [Hoffmann, Samuel J.](#)
Subject: RE: Vibra Hospital of Sacramento, 20-CA-193789
Date: Monday, March 13, 2017 11:49:45 AM

Sam-- I will be submitting a more formal position statement.

Bruce

-----Original Message-----

From: Hoffmann, Samuel J. [<mailto:Samuel.Hoffmann@nrlb.gov>]
Sent: Friday, March 10, 2017 2:21 PM
To: Bruce Bagley
Subject: RE: Vibra Hospital of Sacramento, 20-CA-193789

Bruce,

I spoke to the Union and it looks like they still want to pursue the charge. Do you have any supporting case law to offer relating to the Employer's position on this matter? I'll let you know if the Union happens to change their mind. Thanks.

-Sam

-----Original Message-----

From: Bruce Bagley [<mailto:BBagley@vibrahealth.com>]
Sent: Thursday, March 09, 2017 9:52 AM
To: Hoffmann, Samuel J. <Samuel.Hoffmann@nrlb.gov>
Subject: RE: Vibra Hospital of Sacramento, 20-CA-193789

Sam--have you asked the Union whether they still want to proceed with this Charge?
They filed it right before the RD election and had asked that it block the election.
Now that the union has won the election, I'm not sure what they would hope to gain from this.

In any event as stated below, this one-time only potential mileage reimbursement to unscheduled employees who came to the facility just for the purpose of voting, did not rise to the level of a term or condition of employment. It was an inducement intended to increase the percentage of employees who would vote, as in the 2015 election more than 20 eligible voters had not voted at all. In some ways this was more analogous to a gift to employees than a condition of employment. And as noted below the Board has stated repeatedly over the years that no 8[a][5] unilateral conduct has occurred unless there is a significant, substantial, and material change to terms and conditions of employment.

Also, I assume that when the union filed the charge and requested that it block, they made an offer of proof [as required by the new R-case regs]. Obviously the RD must not have been overly impressed with what she saw because she went ahead with the election.

Please let me know what if anything else you would need from me on this.

Thanks,
Bruce

-----Original Message-----

From: Bruce Bagley
Sent: Wednesday, March 08, 2017 3:55 PM
To: Samuel.Hoffmann@nlrb.gov
Subject: FW: Vibra Hospital of Sacramento, 20-CA-193789

FYI below

-----Original Message-----

From: Parnell, Janay [<mailto:Janay.Parnell@nlrb.gov>]
Sent: Thursday, March 02, 2017 3:05 PM
To: Bruce Bagley
Subject: RE: Vibra Hospital of Sacramento, 20-CA-193789

Sure

Janay Parnell
Field Examiner - Sacramento Resident Agent National Labor Relations Board
901 Market Street, Suite 400
San Francisco, CA 94103

Phone: (202) 406-0912
Fax: (415) 356-5156

-----Original Message-----

From: Bruce Bagley [<mailto:BBagley@vibrahealth.com>]
Sent: Thursday, March 02, 2017 8:04 AM
To: Parnell, Janay <Janay.Parnell@nlrb.gov>
Subject: RE: Vibra Hospital of Sacramento, 20-CA-193789

Hi Janay.

Can you please forward a copy of my Notice of Appearance in the R-case to the Board Agent who is handling the C-case?

I'm also wondering whether in light of the union's victory in the election they really want to pursue the C case at this point?

In order to constitute a violation of section 8[a][5], a unilateral change must have a significant, substantial, and material effect on the terms and conditions of employment. Here there was a one-time offer to reimburse reasonable transportation costs of employees not scheduled to work who were driving to the facility just to vote. That one time offer does not constitute a significant, substantial, and material change in terms and conditions of employment!

Thanks,
Bruce

-----Original Message-----

From: Parnell, Janay [<mailto:Janay.Parnell@nlrb.gov>]
Sent: Monday, February 27, 2017 9:01 PM
To: Bruce Bagley
Subject: RE: Vibra Hospital of Sacramento, 20-CA-193789

Attached is a copy of the charge.

Janay Parnell
Field Examiner - Sacramento Resident Agent National Labor Relations Board
901 Market Street, Suite 400
San Francisco, CA 94103

Phone: (202) 406-0912
Fax: (415) 356-5156

-----Original Message-----

From: Bruce Bagley [<mailto:BBagley@vibrahealth.com>]
Sent: Monday, February 27, 2017 5:03 PM
To: Parnell, Janay <Janay.Parnell@nlrb.gov>
Cc: Adam Day <aday12345@hotmail.com>
Subject: Re: Vibra Hospital of Sacramento, 20-CA-193789

Can you forward a copy of the Charge?

Sent from my iPhone

On Feb 27, 2017, at 3:29 PM, Parnell, Janay <Janay.Parnell@nlrb.gov><<mailto:Janay.Parnell@nlrb.gov>>> wrote:

Dear Gentlemen,

Last Friday, the Union filed the above-captioned charge and requested that it block the election that is scheduled for tomorrow. This e-mail is simply to inform you that the Region will NOT be blocking the election, and that the election will proceed forward as planned.

Sincerely,
Janay

Janay Parnell
Field Examiner - Sacramento Resident Agent National Labor Relations Board
901 Market Street, Suite 400
San Francisco, CA 94103

Phone: (202) 406-0912
Fax: (415) 356-5156

CONFIDENTIALITY NOTICE:
OFFICIAL GOVERNMENT BUSINESS

THIS COMMUNICATION IS INTENDED FOR THE SOLE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS COMMUNICATION IS NOT THE INTENDED RECIPIENT OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS COMMUNICATION MAY BE STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY ME IMMEDIATELY BY TELEPHONE CALL, AND RETURN COMMUNICATION TO ME AT THE ADDRESS ABOVE VIA UNITED STATES POSTAL SERVICE. THANK YOU.

Bruce D. Bagley
Direct Dial: 717.503.6641
Direct Fax: 717.260.1661
bbagley@vibrahealth.com

March 15, 2017

Samuel J. Hoffmann, Field Examiner
National Labor Relations Board
Region 20
901 Market Street, Suite 400
San Francisco, CA 94103-1738

VIA E-MAIL

RE: Vibra Hospital of Sacramento
Case 20-CA-193789

Dear Sam:

As your files should reflect, I am Counsel to Vibra Hospital of Sacramento, the Employer in the above-captioned matter. This is in response to your email correspondence of March 10, 2017, requesting additional information with regard to Vibra's position in this matter.

As you will recall, a representation election was conducted in 2015, in Case 20-RC-160089, resulting in the Union's Certification. There were approximately 120 eligible voters, but only 95 employees actually voted. [See the Tally of Ballots in that Case.] Many employees reside at considerable distances from the Hospital and on any given day many may not be scheduled to work on that particular day.

Vibra sought to avoid repetition of the first election's low voter turnout. After the decertification election was scheduled to take place on February 28 in Case 20-RD-192543, Vibra decided to offer reimbursement to employees for actual mileage incurred in driving to and from the Hospital, if they were not scheduled to actually work on February 28. The offer was explicitly made to all unscheduled employees, regardless of which way they intended to vote in the election. There were 18 employees who subsequently requested reimbursement, averaging about \$25 per employee. [No taxes were withheld as these amounts were not wages.]

The Board has long held that it is not objectionable conduct for an employer to offer its employees monetary payments to encourage voting, as long as those payments do not exceed actual transportation expenses. Sunrise Rehabilitation Hospital, 320 NLRB 212 [1995]; Good Shephard Home, 321 NLRB 426 [1996]. In offering mileage reimbursement, Vibra was acting in accord with well-established NLRB case precedent.

On February 24, the Union filed its Charge in the instant matter, specifically requesting that the Charge block the holding of the election. The Charge alleged that Vibra's offer to reimburse unscheduled employees constituted "unilateral implementation" of a "policy" to pay mileage of employees, in violation of the duty to bargain in good faith. For

the reasons to be referenced below, Vibra emphatically disagrees with this assertion and requests that the Charge be dismissed.

First, not every change instituted by an employer without bargaining rises to the level of an unlawful unilateral change. In order to be violative of Section 8[a][5] of the Act, it is axiomatic that the alleged change must have a significant, substantial, and material effect on terms and conditions of employment. See, e.g., Success Village Apts., Inc., 348 NLRB 579 [2006]. Here the one-time offer to reimburse mileage expense does not rise to the level of a significant, substantial, and material change in the bargaining unit's terms and conditions of employment. While the Charge asserts implementation of a new "policy," this was hardly a policy, as it had no longer-term ramifications and its import immediately ceased once the polls closed on February 28. And it certainly was not a "change in policy" as there was no pre-existing policy addressing such travel expense for unscheduled employees.

Secondly, there was never any request by the Union to bargain over the alleged change. The announcement of the one-time reimbursement offer was made the week before the election to all employees, many of whom were union supporters and several of whom were on the Union's bargaining team. The Union, having no doubt learned of the Hospital's intentions, could have easily requested bargaining, or at least informed the Hospital of its position, with plenty of time prior to the election. The Charge was filed four days before the election. Had the Union truly desired to bargain it could have expressed this position to Vibra rather than rushing to file a charge in an effort to block the election.

Thirdly, it is Vibra's position in this matter that the one-time offer was not even a "term or condition of employment" at all. By way of example, in General Die Casters, Inc., 358 NLRB 742 [2012], the employer unilaterally decided to pay witness fees to certain employees who testified at an NLRB hearing. The Board rejected the union's contention that the employer should have first notified and bargained with the union before reaching this decision, holding there was no violation of Section 8[a][5] because the payment of witness fees was not itself a term or condition of employment. The Board noted that an employer has no obligation to bargain over non-mandatory subjects of bargaining, that the payment of witness fees arising from an NLRB proceeding was not "directed at the employment relationship," and therefore was not a mandatory subject for bargaining.

Your attention is respectfully directed to North American Pipe Corp., 347 NLRB 836 [2006], where the employer made a substantial one-time grant of shares of corporate stock to its employees. The union argued this was a unilateral change in compensation, violative of the employer's good-faith bargaining obligations. The Board rejected that claim, holding that the grant of stock was not remuneration for working, and therefore was more in the nature of a gift not requiring bargaining at all. [By the way, the stock was valued at \$1450 per employee, a far cry from the token amounts Vibra reimbursed to 18 employees for their mileage expense.]

The North American Pipe Board explained that not all payments to employees constitute wages or terms of employment. In order to constitute a mandatory subject of bargaining, the fact of payment and amounts of payment must be tied to various employment-related factors such as work performance, wages, regularity of the payment, hours worked, seniority, and production. Id. at 837. The stock award in North American

Pipe was not tied to such factors, and as should be the case with the one-time reimbursement at issue in the instant matter, the stock award was not considered to be remuneration for working and therefore not a mandatory subject for bargaining.


Applying the North American Pipe test, Vibra's one-time reimbursement offer had nothing to do with employees' work performance, nothing to do with how many hours they did or did not work, had no relationship to the amount of wages they were being paid, and had nothing to do with how many hours they had worked, their seniority, or their productivity. There was no tax withholding from the reimbursement, a factor the Board considers to be indicative that the payment did not constitute wages. Id. at 840. And in North American Pipe the Board particularly noted that the stock award was a "one-time event. . .with no promise or prospect of repetition." Id. at 838. Obviously the same logic would apply to Vibra's one-time reimbursement offer as well.

In summary, it is Vibra's position that its one-time offer to reimburse mileage expense for unscheduled employees who drove to work, in order to attend the NLRB election, was not a unilateral change in any pre-existing "policy" as alleged, was not a change in wages or other terms of employment, did not constitute remuneration for working, and therefore was not a mandatory subject of bargaining. Moreover the Union never requested bargaining over the issue despite having had ample opportunity to do so. For all of these reasons we respectfully request that the Regional Director find no merit and dismiss the Charge in this matter.

Thank you for your attention to the above.

Sincerely,

VIBRA HOSPITAL OF SACRAMENTO

By 
Bruce D. Bagley



UNITED STATES GOVERNMENT
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April 3, 2017

Bruce D. Bagley
4550 Lena Dr Ste 225
Mechanicsburg, PA 17055-4920

Re: Vibra Hospital of Sacramento
Case 20-CA-193789

Dear Mr. Bagley:

This is to advise you that I have approved the withdrawal of the charge in the above matter.

Very truly yours,

/s/

Daniel Owens

Acting Regional Director

cc: Chase Caldwell, Employer Representative
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Folsom, CA 95630-2720

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